



February 18, 2021

RE: SB 660 An Act Expanding Workers' Compensation Benefits for Mental or Emotional Impairments Suffered by All Workers

Dear Members of the Labor and Public Employees Committee:

I serve as General Counsel for the Insurance Association of Connecticut ("IAC"), a state-based trade association for Connecticut's insurance industry. Thank you for the opportunity to offer comment in strong opposition to SB 660 An Act Expanding Workers' Compensation Benefits for Mental or Emotional Impairments Suffered by All Workers.

Mental and emotional impairments are multifaceted, of complex origin and highly subjective. Expansion of coverage for mental or emotional impairments will result in a significant increase of claims, and cause claims unrelated to work to be accepted as compensable, which undermines the intent of the Workers' Compensation Act ("Act"). Expansion of coverage for all employees for all mental and emotional impairments will cause workers' compensation costs to significantly increase and threaten the affordability of workers' compensation insurance. The increase of claims would also cause an increase in hearings and administration costs for the workers' compensation system.

Unfortunately, mental and emotional impairments are extremely common. According to the National Council for Behavioral Health ("NCBH"), 40 million adults (almost 20% of the population) suffer from anxiety disorders.¹ Self-reports from June of 2020 indicated that approximately 40% of U.S. adults were struggling with mental health or substance abuse.

More often than not mental and emotional impairments originate from childhood and are unrelated to work. The NCBH has found that approximately 50% of all lifetime mental illness begins by age 14, and approximately 75% by age 24.

¹ <https://www.mentalhealthfirstaid.org/external/2020/11/10-surprising-mental-health-statistics-from-2020/>

Under the Workers' Compensation Act ("Act"), employers take employees as they find them. If mental or emotional impairments were to become compensable injuries, any pre-existing mental or emotional condition, including depression, general anxiety, social anxiety, separation anxiety, stress-related disorders, mood disorders, attention deficit hyperactivity disorder, sleep disorders, eating disorders, or substance abuse disorders aggravated by an employee's perceived stress related to their employment could be found compensable under the Act. Every employee in the state who alleged such a claim would be eligible for indemnity and medical benefits throughout their life. The increase in claims would place a tremendous burden on employers and the workers' compensation system as a whole.

"Mental-mental" claims (mental claims caused by mental stress), had their genesis in the 1980s.² According to DeCarlo and Minkowitz, between 1980 and 1988, a great surge of filings occurred and claims for mental disability more than doubled.³ The Larson Workers' Compensation treatise features an entire subsection addressing the "upsurge of stress claims" during this period.⁴ In California, the number of stress injury claims rose from 1,282 in 1980 to 6,812 in 1986.⁵ "These claims were said to be especially onerous for business, as the cost of defending and resolving them was "typically much higher than for 'old-fashioned' physical claims."⁶

In recognizing issues associated with mental-mental claims, the Workers' Compensation Act Reforms of 1993 properly placed limitations on coverage. Specifically, stress-related claims were limited to instances where the mental injury was caused by a physical injury or occupational disease.⁷

Since that time, Connecticut has made tremendous strides in improving the competitiveness of the workers' compensation market. For the past six consecutive years, workers' compensation insurance rates have steadily decreased, reflecting a decline in the number of workplace injuries and claims filed.⁸ This decline in claims and corresponding decline in premiums have helped business owners with one of their most significant operating expenses, workers' compensation insurance. It is axiomatic that expansion of coverage will not only cause an

² David Torrey, MENTAL STRESS CAUSING MENTAL DISABILITY UNDER WORKERS' COMPENSATION LAWS A SHORT HISTORY, THE COMPETING ARGUMENTS, AND A 2020 INVENTORY, 2020, <https://lawprofessors.typepad.com/files/torrey-mental-mental-final-with-3-tables-2020.pdf>

³ *Id.* Pg. 4 (discussing DONALD T. DECARLO & MARTIN MINKOWITZ, WORKERS COMPENSATION INSURANCE LAW & PRACTICE: THE NEXT GENERATION Chapter 11 (1989) p.283. See also Donald T. DeCarlo, Compensating Stress in the '80's, INSURANCE COUNSEL JOURNAL, p.681 (1985)).

⁴ *Id.* Pg. 4 (quoting ARTHUR LARSON, WORKERS' COMPENSATION, Chapter 56 & Digest to Chapter 56 (updated through June 2019)).

⁵ *Id.* Pg. 4 (citing California Work Injuries and Illnesses – 1986 (Cal. Div. of Labor Statistics & Research 1986), cited in JOSEPH W. LITTLE, THOMAS A. EATON & GARY R. SMITH, CASES AND MATERIALS ON WORKERS' COMPENSATION, p.297 (3d ed. 1993)).

⁶ *Id.* P. 18, citing Larson, *supra*.

⁷ <https://www.cga.ct.gov/ps93/Act/pa/1993PA-00228-R00HB-07172-PA.htm>

⁸ <https://portal.ct.gov/CID/News-Releases/Press-Releases/Press-Releases-20191030>

increase in risk and premiums for policy holders, but also prove more costly for local governments and entities that are self-insured.

While we recognize the need to properly address mental health issues in the workplace, it is also important to recognize that mental-mental claims are both complex and subjective in nature. Each employee may perceive work-related stress differently. Assessing the credibility of these mental-mental claims can be challenging due to objective tests, such as x-rays and MRIs that are used to evaluate physical injuries, being unavailable.

The lack of scientific instruments to objectively evaluate these claims also makes it difficult to distinguish a claim that is primarily work related from one that is not.⁹ Mental health problems can affect any employee at any time, and the reasons they develop are varied. Genetics, adverse childhood experiences, and environmental stimuli may all be causes.

Having had the privilege to work for the State of Connecticut in the capacity of an Assistant Attorney General in its Workers' Compensation Department, I am intimately aware of the challenges involved with the investigation of mental health claims, the associated cost of defense, and tremendous exposure involved. Discovery is often more difficult, medical exams and opinions are often more costly, and medical opinions are less reliable because they are based on the subjective complaints of the claimant.

Should this issue advance we would welcome the opportunity to work with the Labor Committee to ensure that legislation is properly limited and clearly defined, in order to accomplish its intended purpose while minimizing its impact on businesses that may already be struggling financially and the workers' compensation system as a whole.

Thank you for the opportunity to present the IAC's comments.

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⁹ <https://journals.sagepub.com/doi/pdf/10.1177/216507999404201007>

